

(2) Claimant could not reasonably have been expected to have known of such exclusion.

(c) A claimant who is notified that his or her attending physician has been excluded shall have a new right to select a duly qualified physician. See § 10.401(b).

**§ 10.457 Reinstatement.**

(a) If a physician, hospital, or provider of medical support services or supplies has been automatically excluded pursuant to § 10.451, the person excluded will automatically be reinstated upon notice to the Office that the conviction or exclusion which formed the basis of the automatic exclusion has been reversed or withdrawn. However, an automatic reinstatement shall not preclude the Office from instituting exclusion proceedings based upon the underlying facts of the matter.

(b) A physician, hospital, or provider of medical support services or supplies excluded from participation as a result of an order issued pursuant to this subpart may apply for reinstatement one year after the entry of the order of exclusion, unless the order expressly provides for a shorter period. An application for reinstatement shall be addressed to the Associate Director for Federal Employees' Compensation, and shall contain a concise statement of the basis for the application. The application should be accompanied by supporting documents and affidavits.

(c) A request for reinstatement may be accompanied by a request for oral argument. Oral argument will be allowed only in unusual circumstances where it will materially aid the decisional process.

(d) The Associate Director shall order reinstatement only in instances where such reinstatement is clearly consistent with the ultimate goal of this subpart which is to protect the FECA program against fraud and abuse. To satisfy this requirement the provider must provide reasonable assurances that the basis for the exclusion will not be repeated.

**Subpart G—Cases Involving the Liability of a Third Party**

**§ 10.500 Prosecution of third party action by a beneficiary.**

If an injury or death for which benefits are payable under the Act is caused under circumstances creating a legal liability upon some person or persons other than the United States to pay damages, the Office may require the beneficiary to prosecute an action for damages against the third party. When so required, the cause of action shall be prosecuted in the name of the beneficiary.

[52 FR 10522, Apr. 1, 1987]

**§ 10.501 Assignment of third party.**

If an injury or death for which benefits are payable under the Act is caused under circumstances creating a legal liability upon some person other than the United States to pay damages therefore, the beneficiary shall, if required by the Office assign any right of action he may have to the United States. All such assignments shall be in writing and no such cause of action shall vest in the United States unless and until the assignment is accepted by the Office.

**§ 10.502 Refusal to assign or prosecute claim when required; effect.**

Refusal on the part of a beneficiary to assign his right of action to the United States or to prosecute an action in his own name when required to do so pursuant to § 10.500 or § 10.501, shall deprive the beneficiary of all rights to benefits under the Act.

**§ 10.503 Distribution of damages recovered by beneficiary.**

If an injury or death for which benefits are payable under the Act is caused under circumstances creating a legal liability upon a person or persons other than the United States to pay damages and, as a result of claim brought by or settlement made by the beneficiary or by someone acting on the beneficiary's behalf, the beneficiary recovers damages or receives money or other property in satisfaction of the liability on account of that injury or death, the

proceeds of the recovery shall be applied as follows:

(a) If an attorney is employed, a reasonable attorney's fee and cost of collection, if any, shall first be deducted from the gross amount of the settlement;

(b) The beneficiary is entitled to retain one-fifth of the net amount of the money or other property remaining after the expenses of a suit or settlement have been deducted.

(c) There shall then be remitted to the Office the benefits which have been paid on account of the injury including payments made on account of medical treatment, transportation costs, funeral expenses, and any other payments made under the Act on account of the injury or death, but not including continuation of pay as provided by 5 U.S.C. 8118. If an attorney was employed, the amount to be remitted to the Office shall be reduced by an amount equivalent to a reasonable attorney's fee proportionate to any refund to the United States.

(d) Any surplus remaining after proper refund has been made to the Office may be retained by the beneficiary but shall be credited by the Office against future payment of benefits to which the beneficiary may be entitled under the Act on account of the same injury or death.

[40 FR 6877, Feb. 14, 1975, as amended at 52 FR 10522, Apr. 1, 1987]

**§ 10.504 Distribution of damages where cause of action is assigned.**

If recovery is realized upon a cause of action assigned to the United States pursuant to 5 U.S.C. 8131, the money or other property so received shall be applied in the following manner: After deducting the amount of any payments made under the Act in respect of the injury or death on account of which the cause of action arose, and the expense of such realization or collection, which sum shall be placed to the credit of the proper fund of the Office, the surplus, if any, of such amount received shall be paid to the beneficiary and credited pro tanto upon any future payment of benefits payable to him on account of the same injury. However, the beneficiary is entitled to not less than one-fifth of the net amount of a

settlement or recovery remaining after the expenses of such realization or collection have been deducted.

**§ 10.505 Office may require beneficiary to settle or compromise third party suit.**

Where a beneficiary under the Act has commenced an action in his or her own name or has initiated such action through an administrator of a deceased person to recover damages against the third party liable for the injury or death, the Office shall, at all times, have authority to require the beneficiary or such administrator to settle or compromise such action whenever it shall determine that further prosecution of the cause of action is not warranted. Refusal on the part of such beneficiary or other person acting in the interest of the beneficiary to make such settlement or to effect such compromise when so directed shall be deemed to be sufficient cause for refusal on the part of the Office to pay or cause to be paid any benefits under the Act on account of the same injury or death, or the Office may suspend or cause to suspend the payment of benefits under the Act during the period of such refusal.

**§ 10.506 Official superior's responsibility in cases involving potential third party liability.**

If it appears that an injury or death for which benefits are payable under the Act was caused under circumstances creating a legal liability upon a person or persons other than the United States to pay damages, the official superior or other agency official shall investigate the third party aspect of the injury or death and submit a report of the findings with related documents to the Office.

[52 FR 10523, Apr. 1, 1987]

**§ 10.507 Satisfaction of the interest of the United States.**

No court, insurer, attorney, or other person shall pay or distribute to the beneficiary or the beneficiary's designee the proceeds of any suit or settlement without first satisfying or assuring satisfaction of the interest of the United States.

[52 FR 10523, Apr. 1, 1987]